

09-112

The Secretary of State presents her compliments to Their Excellencies and Messieurs and Mesdames the Chiefs of Mission and has the honor to restate policies and procedures regarding the application of the Foreign Missions Act (The Act) to real property of foreign missions in the United States. The subject was last brought to the attention of the Chiefs of Mission in the Department's circular diplomatic note of April 12, 2006. The Department of State requests the continued cooperation of all missions in meeting the requirements of the Foreign Missions Act.

#### NOTIFICATION REQUIREMENT

Pursuant to section 4305 of the Act, all foreign missions are obligated to notify the Department of State **prior** to a proposed lease, purchase, sale, or other acquisition or disposition of real property in the United States by or on behalf of a foreign mission. Under Section 4305 all such transactions are subject to disapproval by the Department.

The notification requirement applies to properties acquired for office or residential use by the foreign government for its diplomatic mission in Washington and career consular posts around the United States. For some missions, the requirement may also extend to acquisitions by individual members of the mission.

In addition to prior notification regarding the lease, purchase, or sale of a new or existing property, the alteration, addition or change in use of an existing property is also considered an “acquisition” under the Act and must be submitted to the Department for review. The Department understands **"alteration"** to include any type of construction, repair, installation or other work that **requires issuance of a permit from the relevant local governmental authority**. In this regard, missions are reminded that, in nearly all cases, diplomatic and consular premises, **whether office or residential**, are not exempt from the requirement of obtaining zoning and/or building permits with respect to any property-related activity in which they may engage.

Missions are encouraged to notify the Department's Office of Foreign Missions (OFM) Property, Tax, Services and Benefits Section of proposed acquisitions as early in the process as possible. Missions that obtain the

benefit of the Department's experience and advice in the early stages of an acquisition may avoid any unnecessary financial or legal complications.

The notification process is initiated by the delivery of a diplomatic note to OFM located in room 2236 of the main building of the Department of State. Diplomatic notes may be faxed to 202-736-4145 or emailed to [ofmproperty@state.gov](mailto:ofmproperty@state.gov).

At a minimum, the note should include:

1. The exact address of the property, including apartment or suite number.
2. The proposed or existing use of the property, i.e., chancery, chancery annex, consulate, consular annex, Chief of Mission residence, staff residence.
3. The proposed transaction, i.e., purchase, lease (including lease term), sale, alteration or expansion.
4. A description of a proposed alteration or expansion of an existing property.

After receipt of the diplomatic note, the Act allows the Department up to sixty (60) days to review the request. Normally OFM will be able to provide a response within two to three weeks. In some cases, however, the full review period may be required. Missions are encouraged to submit notifications as far in advance as possible.

Prior to receiving a response from OFM to the notification, a mission may not enter into a contract or lease agreement unless the agreement expressly states that the execution of the agreement is subject to disapproval by the Department of State. The Chiefs of Mission are reminded that significant financial and legal complications could result if this requirement is overlooked.

Properties acquired by foreign missions for diplomatic or consular purposes are to be used in their entirety for the prescribed purposes. Property approved for diplomatic or consular purposes may not be used, even in part, for any other purpose, such as office space for other governmental organizations, state-owned or private commercial entities, and may not be rented out to any other party not affiliated with the mission, without the express consent of the Department.

#### PROPERTY FOR CHANCERY USE

Chanceries and chancery annexes are traditionally located in the District of Columbia. On a case-by-case basis, however, the Department will consider other locations in the Washington Metropolitan area.

### Chancery Properties in the District of Columbia

For chanceries or chancery annexes located in the **District of Columbia**, the determination as to whether a proposed site is acceptable, or whether the expansion or alteration of an existing chancery complies with local building codes and regulations, is subject to section 4306 of the Foreign Missions Act. The approval process outlined in that section of the Act addresses the location, expansion, or alteration of the chanceries in the District of Columbia, and is separate from, and in addition to, the notification process outlined above, and mandated by section 4305 of the Act.

The following information is provided to assist missions that intend to acquire new chancery space or expand existing chanceries in the District of Columbia:

1. Requirement for an Occupancy Permit: All foreign missions are required to obtain an occupancy permit from the Government of the District of Columbia before a building or office may be occupied as a chancery or chancery annex. Applications for an occupancy permit may be found at [www.dkra.dc.gov](http://www.dkra.dc.gov). Foreign Missions are advised to include in any

chancery purchase contract or lease agreement that it is subject to the issuance of a Certificate of Occupancy from the District of Columbia as well as Department of State approval.

2. Zoning Approval Process: Depending on the location of the property acquired, an occupancy permit may be issued by the District of Columbia as a “matter of right” or only after the chancery use has been reviewed and approved by the Foreign Missions Board of Zoning Adjustment (FMBZA) of the District of Columbia. The FMBZA review process will take several months to complete and will include a public hearing. Should the acquisition be subject to FMBZA review, the mission will need private legal representation to complete the approval process.

For locations outside of the District of Columbia, a mission must comply with the zoning and land-use laws and regulations and permit requirements applicable in the local jurisdiction.

3. Expansion or alteration of existing properties: Depending on the scope of the project, the expansion or alteration of an existing chancery property may also be subject to review and approval by the FMBZA. The Act requires missions to substantially comply with all local building codes and regulations, including obtaining all appropriate building permits.

The Government of the District of Columbia normally will not issue a building or construction permit without the written concurrence of OFM.

The missions and their contractors may obtain a letter of support from OFM upon submission of a completed permit application and a copy of OFM's prior authorization. On the basis of reciprocity, OFM may also ask the District Government to issue the permit without charging a fee.

The information provided above about local zoning requirements for chancery use is not exhaustive, and missions are cautioned to fully explore the zoning and land-use implications of a particular property acquisition or renovation project in the District of Columbia, including whether the property is considered historic and the construction implications of such status, before concluding any contract or agreement.

Depending on the location, chanceries and chancery annexes in the District of Columbia may also be able to obtain reserved on-street diplomatic parking in front the facility. Additional information concerning this matter is available at [www.state.gov/ofm/property/parking/index.htm](http://www.state.gov/ofm/property/parking/index.htm).

#### 4. Chancery Properties outside the District of Columbia

The special approval process for the location, alteration or expansion of chancery properties outlined in section of 4306 of the Foreign Missions

Act does not apply to locations outside the District of Columbia. However, such facilities are subject to the applicable zoning laws and regulations of the local jurisdiction, including compliance with building codes and regulations.

### PROPERTY FOR CONSULAR USE

The prior notification requirements of section 4305 of the Act applies equally to the purchase, disposition, lease, alteration, expansion, or change of use of consular properties (“acquisitions”), office or residential, acquired by foreign missions throughout the United States. Therefore, the Chiefs of Mission are requested to transmit a copy of this note to all their career consular posts and advise them that “acquisitions” of real property, whether by construction, lease, purchase or disposition, without prior notification to the Department is a violation of United States law.

OFM has regional offices in Chicago, Houston, Los Angeles, Miami, New York, and San Francisco, to assist consulates in complying with requirements of the Act and with the laws and regulations of the local jurisdiction. The Department has no objection to the consular posts



providing written notification of proposed property transactions directly to the appropriate OFM Regional Office.

In addition to the notification requirements, consular properties are subject to the building and land-use laws and regulations of the local jurisdiction, including permit requirements. It is the responsibility of the mission and its consular posts to be informed of, and in compliance with, the regulations of the jurisdiction in which they are located. Inasmuch as failure to comply with local laws could result in legal and financial complications for a consular post, missions are encouraged to notify the Department, and consult with OFM regarding a particular project at the earliest possible date.

## TAXES ON PROPERTY TRANSACTIONS

### Diplomatic Properties

The Vienna Convention on Diplomatic Relations provides that diplomatic missions are entitled to exemption from real estate taxes on properties they own and use for purposes of their diplomatic mission, including chanceries and chancery annexes, and the residence of the Chief of Mission. Properties owned by foreign governments and used as residences of the members of the diplomatic mission accredited to the United States are

also exempt from property taxes, subject to reciprocity. These tax exemptions are limited to those real estate taxes for which missions are otherwise legally obligated to pay, and include annual property taxes and one-time taxes associated with the purchase or sale of a property.

The Chiefs of Mission are reminded that any portion of property owned by foreign governments that is not used for diplomatic purposes will not enjoy tax exemption or inviolability.

#### Consular Properties

The Vienna Convention on Consular Relations provides exemption from real estate taxes on properties that are owned by the government and used as a consulate or as the residence of the career head of a consular post. In addition, the Department has recently determined that government owned residences used to house members of the staff of consular posts are also entitled to real estate tax exemption subject to reciprocity. The applicable taxes include annual property taxes and one-time taxes associated with the purchase or sale of a property.

The Chiefs of Mission are advised that the procedure for obtaining exemption for consular properties has changed. The Missions should no longer directly contact the local taxing authority regarding tax exemption but

rather submit such requests to OFM or the appropriate OFM Regional Office. OFM will review the request and, if appropriate, request the taxing jurisdiction to grant the exemption. Requests should include the complete address of the property, the date the deed was recorded, and a copy of the Department's prior approval of the purchase.

### GENERAL GUIDELINES FOR OBTAINING PROPERTY TAX EXEMPTION IN THE WASHINGTON METROPOLITAN AREA

#### Annual Property Taxes

The owner of a real property is generally required to pay an annual tax to the local jurisdiction based on the value of the property.

Subsequent to the settlement of a contract between the foreign mission and the seller to purchase property, and the recordation of the property deed by the mission, a written request should be sent to OFM requesting exemption from property taxes. The request should include the address of the property, its use (e.g. chancery), the date the deed was recorded, and should reference any earlier Department notes regarding the purchase.

If OFM concurs that the property enjoys exemption from taxation, it will submit a request for property tax exemption directly to the taxing authority in the District of Columbia, Maryland, or Virginia. In the District of Columbia, in addition to a written request from OFM, a form must be completed entitled "Foreign Government Information Request Form", copies of which may be obtained from OFM. The taxing jurisdiction in the Washington Metropolitan Area will grant property tax exemption as of the deed recordation date. Although the jurisdiction may require several weeks or longer to complete the processing of an exemption request, the effective date of the exemption will be the date the deed was recorded.

The Chiefs of Mission are reminded that exemption from taxation does not include exemption from fees separately stated on a property tax bill that relate to specific services provided to the property. Typical examples of such services include utilities, water, sewerage, and refuse collection. The property tax bill in Montgomery County, Maryland, for example, includes a charge for refuse collection, and a "front foot benefit charge" for sewerage and water related services. Such charges are separately stated on the tax bill and must be paid.

### Recordation and Transfer Taxes

There may be one-time recordation and/or transfer taxes associated with the purchase or sale of a property that are normally paid at the time the transaction is made final (settlement). Missions are normally entitled to exemption from such taxes based on reciprocity, and with the prior authorization of the OFM.

In the District of Columbia a recordation tax is normally paid by the purchaser. In order to obtain exemption from this tax, the mission must submit a written request for exemption to OFM prior to settlement that includes the property address, a copy of OFM's prior approval of the transaction, and the proposed settlement date.

If the Department concurs that the property is entitled to exemption, OFM will provide the Embassy with a letter addressed to the appropriate taxing authority that the Embassy may present at settlement. The OFM letter is usually all that is required for the taxing authority to exempt the mission from paying a recordation tax.

In the District of Columbia the transfer tax is normally paid by the seller at the time a property is sold. If a foreign mission is the seller the same procedure applicable to recordation taxes should be followed.

### Procedures Unique to the State of Maryland

Many missions purchase residential properties in Montgomery County, Maryland. The procedures for obtaining exemptions from recordation and transfer taxes in that jurisdiction are more complicated than in Virginia and the District of Columbia. There are separate county and state taxes associated with the purchase or sale of real property and a foreign mission must obtain separate letters from OFM requesting exemption from each taxing authority before settlement.

Until 2005, a foreign government purchaser was granted, in most cases, one hundred percent (100%) exemption from the county transfer tax at the time of purchase and zero percent (0%) at the time of sale. This was in contrast to the Maryland State transfer/recordation tax that permitted a foreign government fifty percent (50%) exemption at the time of purchase and fifty percent (50%) at the time of sale.

In 2005 the Montgomery County taxing authority decided to follow the practice of the State authorities and grant fifty percent (50%) at the time of purchase and fifty percent (50%) at the time of sale. Therefore, regardless of the contract terms between the parties, foreign missions will be granted

exemption from fifty percent (50%) of the State and fifty percent (50%) of the country transfer tax at the time of purchase and fifty percent (50%) at the time of sale. Missions should prepare their purchase and sales contracts accordingly.

Missions should note that the Montgomery County change in policy applies **prospectively**. Therefore, property purchased prior to 2005, that was granted one hundred (100%) percent transfer tax exemption at the time of purchase, will not enjoy exemption at the time of sale. Missions are encouraged to prepare their sales contracts accordingly. If additional information is required, missions may contact OFM.

The Chiefs of Mission are also advised that a new law in Maryland requires that non-resident sellers of real property have seven percent (7%) of their sales proceeds held back in escrow unless the seller obtains an exemption certificate at least 21 days prior to settlement.

In order to obtain exemption from the withholding requirement, missions must complete a Maryland State form MW506AE, which may be found at [www.marylandtaxes.com](http://www.marylandtaxes.com), and attach documentation confirming the tax exempt status of the property. If there are any questions, missions are asked to contact OFM.

Inquiries

The Office of Property, Tax, Services and Benefits, within the  
Department's Office of Foreign Missions may be contacted at  
(202) 895-3500, option 5.

Department of State,

Washington,

A handwritten signature in dark ink, consisting of a vertical line with a loop at the top and a small circle in the middle.

AUG 27 2009